

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA,</b>	:	
<b>Plaintiff</b>	:	<b>No. 1:09-CV-2425</b>
	:	
<b>v.</b>	:	<b>(Chief Judge Kane)</b>
	:	
<b>FRANK J. SEBASTIAN, et al.,</b>	:	
<b>Defendants</b>	:	

**MEMORANDUM ORDER**

Before the Court is Plaintiff United States’ motion for default judgment. (Doc. No. 15.) Defendants Frank J. Sebastian, Kelly A. Sebastian, and Margaret M. Trefz have received service of process, yet have failed to make an appearance in the above-captioned action.<sup>1</sup> Notwithstanding Defendants failure to appear, on May 25, 2010, the Court ordered that Defendants be provided with notice of the pending motion for default judgment. (See Doc. No. 19.) In that order, the Court ordered Defendants to show cause within twenty-one days why the entry of default should be set aside and the judgment should not be entered. That time has now expired and Defendants have still failed to appear.

The Government seeks recovery of federal tax assessments made against Frank J. Sebastian and Kelly A. Sebastian, to foreclose federal tax liens against certain real property, and to sell the real property. (Doc. 17 at 1.) The Government’s claim is supported by documents accompanying the motion. See Fed. R. Civ. P. 55(b) (allowing court to enter judgment by default without hearing if claim is “for a sum which can by computation be made certain”).

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<sup>1</sup> A fourth defendant, Henry Nolt, has entered into a stipulation with the Government agreeing that the United States’ tax liens are prior and superior to the mortgage of Nolt as to the real property located at 4189 East Harrisburg Pike, Middletown, Pennsylvania 17057. (See Doc. No. 10.)

**AND NOW**, this 7th day of July 2010, having considered the United States' Motion for Default Judgment, the memorandum of law, the lack of any opposition thereto,<sup>2</sup> and the entire record of this proceeding, it is **HEREBY ORDERED THAT**:

1. The United States' motion for default judgment is **GRANTED**.
2. Judgments shall be issued (1) against Defendant Frank J. Sebastian for federal employment, unemployment, and highway use taxes, interest and penalties for the taxable periods ending 6/30/2001, 6/30/2002, 9/30/2002, 12/31/2002, 6/30/2003, 7/1/2003, 9/30/2003, 12/31/2003, 3/31/2004, 6/30/2004, 7/1/2004, 9/30/2004, 12/31/2004, 9/30/2005, and 12/31/2005 in the amount of \$226,747.30 as of March 18, 2010 plus penalties and interest pursuant to 28 U.S.C. § 1961(c) and 26 U.S.C. § 6621(a)(2) after that date until the full amount is paid; (2) against Defendants Frank J. Sebastian and Kelly A. Sebastian for federal income taxes, interest and penalties for tax years 2002 and 2003 in the amount of \$167,159.11 as of March 18, 2010 plus penalties and interest pursuant to 28 U.S.C. § 1961(c) and 26 U.S.C. § 6621(a)(2) after that date until the full amount is paid; and (3) against Defendant Margaret M. Trefz, precluding her from asserting an interest in the property that is the subject of this civil action.
3. The federal tax liens are foreclosed.
4. The Real Property be sold according to the Order of Sale, free and clear of any right, title, lien, claim, or interest of any of the parties herein.
5. The Clerk shall distribute copies of this order to the persons listed below.

By the Court:

S/ Yvette Kane  
Yvette Kane, Chief Judge  
United States District Court  
Middle District of Pennsylvania

COPIES TO:

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<sup>2</sup> "When a defendant fails to appear and perhaps under other circumstances covered by Rule 55, the district court or its clerk is authorized to enter a default judgment based solely on the fact that the default has occurred." Anchorage Associates v. Virgin Islands Bd. of Tax Review, 922 F.2d 168, 177 n.9 (3d Cir. 1990). Consideration of Poulis type factors would be appropriate if Defendants file a motion to lift the default under Rule 55(c) or Rule 60(b) and "a record is supplied that will permit such consideration." Id. (citing Poulis v. State Farm Fire & Casualty Co., 747 F.2d 863 (3d Cir.1984)).

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